

**Report to:** SINGLE COMMISSIONING BOARD

**Date:** 14 November 2017

**Reporting Member / Officer of Single Commissioning Board** Stephanie Butterworth, Director, Adults, People

**Subject:** **EXTENSION OF THE CURRENT ONGOING CONTRACTUAL RELATIONSHIP (THE PRE-PLACEMENT AGREEMENT FOR THE PROVISION OF PERMANENT, TEMPORARY OR RESPITE CARE FOR OLDER PEOPLE IN A CARE HOME (WITH OR WITHOUT NURSING)) TO 31 MARCH 2018**

**Report Summary:** The report is seeking authorisation to extend the current ongoing contractual agreement until 31 March 2018 to allow for continuing dialogue with the sector to ensure that future agreement is robust yet flexible enough to allow for changes based on the work of the Greater Manchester Health & Social Care Partnership. The extension would also allow time to continue dialogue about the contract and to explore the following proposals:

1. a change in policy to remove the Off/On Framework arrangement;
2. a different category of enhanced residential care;
3. to establish a new approved list using the Dynamic Purchasing System (whilst recognising service users' rights to choose any care home provider that is registered with the Care Quality Commission and meets the conditions as laid out in the Care Act Guidance 2017).

**Recommendations:** This report is seeking approval to extend the current ongoing contractual arrangement with the care home providers until 31 March 2018 to allow for further exploration of the three points listed above.

**Financial Implications:**  
(Authorised by the Section 151 Officer)

<b>Budget Allocation (if Investment Decision)</b>	The extension to the contract on current terms will be met from within existing resources.
<b>CCG or TMBC Budget Allocation</b>	TMBC
<b>Integrated Commissioning Fund Section – S75, Aligned, In-Collaboration</b>	Section 75
<b>Decision Body – SCB, Executive Cabinet, CCG Governing Body</b>	Single Commissioning Board

<b>Value For Money Implications – e.g. Savings Deliverable, Avoidance, Expenditure Benchmark Comparisons</b>	<p>The continuation of the existing contract terms means that the agreement made in the procurement exercise remains in place. A new tender will test the market and will help to ensure that value for money is achieved in the latest market conditions.</p>
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**Legal Implications:**

**(Authorised by the Borough Solicitor)**

The purpose of extending the contracts until 31 March 2018 is to ensure that all options have been properly explored and full governance has been obtained to agree to a permanent change of policy.

As the Council introduced the policy in 2012 any final change of policy should also be agreed by the Council's Executive Cabinet.

A further report should be brought back to the Single Commissioning Board and taken to Executive Cabinet in March 2018 to advise of the outcome of the continuing work and to recommend what the final change of policy should be.

**How do proposals align with Health & Wellbeing Strategy?**

The proposals align with the Developing Well, Living Well and Working Well programmes for action

**How do proposals align with Locality Plan?**

The service is consistent with the following priority transformation programmes:

- Enabling self-care
- Locality-based services
- Planned care services

**How do proposals align with the Commissioning Strategy?**

The service contributes to the Commissioning Strategy by:

- Empowering citizens and communities
- Commission for the 'whole person'
- Create a proactive and holistic population health system

**Recommendations / views of the Health and Care Advisory Group:**

The report has not been presented at the Health and Care Advisory Group.

**Public and Patient Implications:**

There will be no implications for the existing residents of the care homes as the extension will be extending the current purchasing arrangements (including fee levels).

**Quality Implications:**

Tameside Metropolitan Borough Council is subject to the duty of Best Value under the Local Government Act 1999, which requires it to achieve continuous improvement in the delivery

of its functions, having regard to a combination of economy, efficiency and effectiveness.

**How do the proposals help to reduce health inequalities?**

Via Healthy Tameside, Supportive Tameside and Safe Tameside

**What are the Equality and Diversity implications?**

There will not be any equality and diversity implication with extending the existing arrangements.

A new Equality Impact Assessment has not been written for this extension, but one will be written for any new proposal that will in place from the 1 April 2018.

**What are the safeguarding implications?**

There are no anticipated safeguarding issues. Where safeguarding concerns arise as a result of the actions or inactions of the provider and their staff, or concerns are raised by staff members or other professionals or members of the public, the Safeguarding Policy will be followed.

**What are the Information Governance implications? Has a privacy impact assessment been conducted?**

Information governance is a core element of all contracts. The necessary protocols for the safe transfer and keeping of confidential information are maintained at all times by both purchaser and provider. Any contracted service will include minimum requirements for training and qualification workers which includes standards and requirements for information governance, privacy and respect.

A privacy impact assessment has not been undertaken.

**Risk Management:**

There is a risk that existing Off Framework providers may not wish to extend the current arrangements past the contract end date as the fees for Off Framework rates are lower than others. Discussions have been undertaken with the providers to outline the rationale for the extension to help mitigate this risk.

**Access to Information :**

The background papers relating to this report can be inspected by contacting:

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## 1. INTRODUCTION

- 1.1 In 2012 the Council, along with the then Tameside & Glossop Primary Care Trust (PCT), worked closely with the care home market to develop a new contract as well as a standard methodology to calculate the usual cost of care (taking account of the providers' costs).
- 1.2 A Key Decision dated 15 August 2012 approved that:
- The Council should procure a framework of approximately 1,200 care beds (750 residential & 450 nursing) with the fee structure as set out in the report and other matters as set out in the report.
  - Where the Council commissions care from care homes in Tameside which are not on the Framework:
  - Placements should retain their existing fee for a transitional period of three months following commencement of the Framework
  - After that period, the fees will be as set out [in the report]
  - With effect from commencement of the Framework the Council should allow top up fees as set out in section 13 of the report
  - With respect to all new placements following the commencement of the Framework, the Council should withdraw from any placement or not accept a duty where a resident is assessed as being able to meet the full cost of the care and either able to manage the placement or having access to the resources to do so) as set out in [the report].
  - The placements in Glossop Care Homes should be treated as being out of Borough placements.
- 1.3 Following the Key Decision a tender was undertaken with the care home sector, with the outcome being based purely on quality (following representation from the sector and the significant amount of work put into the cost of care methodology). This tender was evaluated by representative from both health and social care and the creation of the On/Off Framework Care Home list was established. The contract started on 10 December 2012 and was for a 5 year period (ending on 9 December 2017).
- 1.3.1 Please note that prior to the policy change (which created the Off/On Framework arrangement) the Council had never tendered for the service as all providers had the same contract; which was established with providers to facilitate the service users' choice as determine by the National Assistance Act 1948. It was only the establishment of the Off/On Framework arrangement that required a tender as there was a difference between the fees and the contract between Off/On Contracts, hence the need for a fair, open and transparent process to determine which providers were awarded which contract.
- 1.4 Following an additional tender (required to increase the number of nursing beds on the On Framework) the number of homes/beds On/Off Framework as at May 2013 is noted below:

Category of care	Off Framework		On Framework	
	No. of Homes	Total beds	No. of Homes	Total beds
Residential	13	391	16	778
Nursing	3	122	11	476
<b>Totals:</b>	<b>16</b>	<b>513</b>	<b>27</b>	<b>1254</b>

Note: Two care homes had only a proportion of the beds included On Framework (Hyde NH & Riverside Care Centre) and only single beds are paid at the On Framework rate hence the

discrepancy in the total bed numbers noted above (1,767 in total) and the number of registered beds of 1,838.

- 1.5 Please note that at the time the report was written/published the care home market in Tameside was different than the present time, i.e.:

August 2012			August 2017		
Type of Home	Number	No. of Beds	Type of Home	Number	No. of Beds
Residential	29	1106	Residential	27	1091
Nursing	14	683	Nursing	11	548
Total	43	1789	Total	38	1639

- 1.6 During the time of the current contract five care homes have closed, one care home completely deregistered from nursing care to provide residential care only (and following an extension increased the number of beds) and another home changed the registration of one unit (20 beds) from nursing to residential. The overall impact of these changes has reduced the residential capacity by 15 beds and the nursing capacity by 150 beds.
- 1.7 Of the five care homes that closed, one was an On Framework home with the remaining four being Off Framework.
- 1.8 At the start of the contract period the vast majority of providers were compliant with the Care Quality Commission (CQC); however, during the contract period the CQC amended the way they regulated registered services and started to rate providers based on the essential standards, which was later replaced by the fundamental standards. The current compliance ratings of the providers is noted later in this report.

## 2. CURRENT SITUATION

- 2.1 As noted above the market has significantly changed during the course of this contract, with the loss of significant beds in the borough, specifically nursing beds. This is causing a major problem in Tameside (and surrounding areas) in facilitating timely discharges from hospital.
- 2.2 In August 2012 there were significant vacancy levels in Tameside, i.e. 158 (14.3%) residential and 118 (17.3%) nursing vacancies. As of August 2017 these figures are 90 (8.2%) residential and 29 (5.3%) nursing vacancies.
- 2.3 The placement profile for the Council and Tameside and Glossop Clinical Commissioning Group (CCG) has reduced over the last 5 years, e.g. in August 2012 the Commissioners purchased an average of 940 beds per week, while in July 2017 the Commissioners purchased approximately 747 beds per week. This reduction is a demonstration of the impact of the local policy for supporting people to remain living at home, in their local communities for as long as possible.
- 2.4 The fact that vacancy levels are decreasing yet the Commissioners are purchasing fewer beds is down to a number of factors, i.e. reduced capacity in the market (specifically nursing beds), increased level of self-funders and increased purchasing in the borough by other authorities (due to paucity of placements in those localities).
- 2.5 It was noted earlier that the CQC introduced a revised rating system approximately 3 years ago. The rating profile of homes in the borough as at September 2017 is presented below:

Rating	No. of Homes	% of Homes	No. of Beds	% of Beds
Outstanding	0	0%	0	0%
Good	19	50%	816	50%
Requires improvement	15	39%	684	42%
Inadequate	4	11%	139	8%

2.6 The above can also be broken down into Off, On Framework & Enhanced Payment providers:

Rating	Off Framework		On Framework		Enhanced Framework	
	No. of Homes	% of Homes	No. of Homes	% of Homes	No. of Beds	% of Beds
Outstanding	0	0%	0	0%	0	0%
Good	3	25%	3	75%	11	50%
Requires Improvement	6	50%	1	25%	9	41%
Inadequate	3	25%			2	9%
<b>Total:</b>	12		4		22	2.7

2.8 As can be seen the Off Framework Providers are struggling to perform to the expected standards (as required by the CQC), with only 25% of the homes demonstrating compliance. The majority of these homes do not charge top-ups to residents, with the notable exception of one provider (currently rated 'Good') who charges a top-up in the region of £70-80 per resident per week.

2.9 The small numbers of On Framework (without enhanced payment) homes makes any statistical analysis difficult, but the majority of these providers are performing well with none rated 'Inadequate'.

2.10 The Enhanced Framework providers are performing better than the Off Framework providers, with 50% of them achieving a CQC rating of 'Good'.

2.11 The care home market in Tameside is dominated by a single national provider - HC-One owns 16 care homes in Tameside (745 beds or 45.5%). All of HC-One homes are On Framework, with the majority attracting the enhanced payment premium. This equates to 61.5% of the 1212 On Framework beds in the borough.

2.12 The CQC rating profile of HC-One is slightly worse than the overall profile in Tameside, i.e. 37.5% (6 homes) are rated 'Good', 56.3% (9 homes) rated 'Requires Improvement' with 6.3% (1 home) rated 'Inadequate'.

2.13 The fees in Tameside have increased in line with the agreed methodology (contained within the August 2012 Key Decision), which takes account of the providers actual costs in delivering the service. The increase in the National Minimum Wage and the introduction of the National Living Wage are key factors that have driven the increase in the fees.

2.14 The fees increases for different categories of beds over the course of the contract are noted below:

Bed Type	Off Framework Aug-12	Off Framework 2017-18	Approx. % Increase
Residential Single	£382.00	£444.00	16.23%
Residential EMI	£393.00	£481.90	22.62%

Residential Shared	£344.00	£389.60	13.26%
Nursing Single	£502.00	£602.75	20.07%
Nursing EMI	£520.00	£640.65	23.20%
Nursing Shared	£452.00	£517.00	14.38%

<b>Bed Type</b>	<b>On Framework Standard Aug-12</b>	<b>On Framework - Standard 2017-18</b>	<b>Approx. % Increase</b>
Residential Single	£419	£480.00	14.56%
Residential EMI	£431	£521.00	20.88%
Nursing Single	£551	£639.50	16.06%
Nursing EMI	£569	£680.05	19.52%

<b>Bed Type</b>	<b>Enhanced Rate Aug-12</b>	<b>Enhanced Rate 2017-18</b>	<b>Approx. % Increase</b>
Residential Single	£452.00	£516.00	14.16%
Residential EMI	£464.00	£560.00	20.69%
Nursing Single	£589.00	£675.35	14.66%
Nursing EMI	£608.00	£719.35	18.31%

- 2.15 The levels of need of the residents in care homes also increasing, which can be partly attributed to the Commissioners commitment to supporting people to remain in their own homes for as long as possible, i.e. when service users do require to be in a care home their needs are greater now than they have been in the past.
- 2.16 The staffing ratios haven't changed dramatically during this time as, although they should be determined by the levels of need of the residents, the care homes are also constrained by the available budget (whilst still maintaining financial viability). Historically (under the Registered Homes Act 1984) providers were required to have staffing ratios of 1:8 (care workers: residents) in residential homes. The model that has been used to calculate the fees for 2017/18 allowed for staffing ratios of 1:7. Many of the complaints received from relatives/residents include the view that there is not enough staff.
- 2.17 Providers have, for some time, noted that the recruitment and retention of competent nursing staff has been challenging. This is not just a local issue but is continually reported nationally. The drop in the numbers of nursing beds is a symptom of the challenges in recruiting nurses. The large increase in FNC paid to providers (£110/resident/week in 2012 to £155/resident/week in 2017) was in recognition of this issue and that providers are now relying more on agency workers (and staffing agencies charge substantially more per hour than directly employed staff).
- 2.18 Latterly, the providers have also stated that it is difficult to recruit and retain care workers. This is due to other local providers (not the care sector) paying more for staff for far less responsibility.
- 2.19 The need for providers to use agencies to ensure they have enough staff to meet residents' needs is putting more financial pressure on providers, with one provider paying 25% of the staffing bill on agency staff (primarily nurses).

- 2.20 The present contract – a joint contract with the Council and the CCG - is based upon the Council's standard Adult Social Care Contract with modifications to ensure it is broadly compliant with the NHS Standard Terms and Conditions (as agreed by Hempsons who were commissioned by Tameside & Glossop PCT to ensure this was so).
- 2.21 Tameside Council is leading the Care Home workstream on behalf of the GM Health & Social Care Partnership, with the overall aim to develop a standardised contract/specification and costing model which would be used across the region, albeit with locally implemented elements to reflect local practice and price variations.
- 2.22 The current contract end date of the 9 December 2017 gives all parties the opportunity to reflect and propose amendments. It is not the intention to terminate the contract without putting in place a new one, as this would mean that residents would need to move. Unless the care home does not comply with the requirements of the Care Act Guidance 2017 (see point **Error! Reference source not found.** later in this report) the Council & CCG will continue to contract with the care home provider.
- 2.23 Discussions with the sector have been ongoing for some time regarding the future of the contract and the On/Off Framework structure. Unsurprisingly those care homes Off Framework are keen for this to be removed and all homes be treated the same. Those homes On Framework, and specifically those who receive the Enhanced Payment, are keen to ensure that their fees are not reduced should the Commissioners decide to have a single rate for all providers.
- 2.24 One of the drivers affecting the future direction of the care home sector is the policy to ensure people remain at home for as long as possible/safe to do so. This is affecting the market and will impact on the future provision required, i.e. it is envisaged that more resources will be community based and when service users do require 24 hour support they will require nursing care (rather than residential care).
- 2.25 Following some of the more recent discussions (when the point made in 2.16 was recognised) the providers have mooted the potential for an 'enhanced residential' model to provide for those service users who present more challenges, especially for the increased input required to meet the physical needs. Further work would be required to determine what this model would be, the criteria for people to be assessed for this, and the likely number of people who would be assessed for this to determine how much it would cost.
- 2.26 The Council and CCG has also been working closely to build on current practice and to develop new processes and documentation to provide assurance that the service is being delivered in accordance with the contract and to support providers to be CQC compliant. This development of new documentation has taken account of existing good practice, good practice from neighbouring authorities, NHS England Vanguard schemes and the Independent Age eight quality indicators, as well as the CQC Key Lines of Enquiry. A recent event held on the 7 September 2017 went well, but further work is required to develop the process/documentation in consultation with the care sector.



2.27 Given the current agenda to fully integrate health and social care the Council and CCG has, for some time, been exploring the option of using the NHS Standard Terms and Conditions as the basis for contracting with the care sector. The initial thought was to 'future proof' the contractual arrangement in readiness for any transfer of the contracting function to the NHS Tameside & Glossop Integrated Care Foundation Trust. Work has been undertaken to compare both sets of conditions and, generally, the conditions are similar (as was expected). However, there are elements of the NHS Standard terms that are more onerous than the current contract, which would put more pressure on the care sector. It was recently agreed that, as the fees are based on the current contract conditions and a new financial model has yet to be agreed, the existing terms and conditions would be reviewed and, where necessary, modified to better reflect the local requirements without putting additional undue pressures/burdens on the providers.

### **3. STRATEGIC FIT**

3.1 The service will meet the current objectives as outlined in the Care Act 2014 - under the Care Act, local authorities will take on new functions. This is to make sure that people who live in their areas:

- Receive services that prevent their care needs from becoming more serious, or delay the impact of their needs;
- Can get the information and advice they need to make good decisions about care and support;
- Have providers offering a choice of high quality, appropriate services.

3.2 The Council's Community Strategy supports the delivery of the six Sustainable Community Strategy aims listed below:

- Prosperous Tameside
- Supportive Tameside
- Learning Tameside
- Attractive Tameside
- Safe Tameside
- Healthy Tameside

### **4. PROPOSAL**

4.1 The proposal is to extend the current ongoing contractual arrangements (including fees) until 31 March 2018 to allow for:

- Continued discussions about the contract (terms & conditions and the specification);
- A proposed policy change to remove the Off/On Framework arrangement (including consultation with those service users potentially affected by this);
- Further examination the potential for a new enhanced 'category' of residential care;
- The establishment of a new approved list via a Dynamic Purchasing System (DPS) including working with providers to ensure they have the appropriate skills/knowledge to access The Chest (the system the Council uses for tendering).

- 4.2 Please note a DPS has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time. However, it has its own specific set of requirements. It is to be run as a completely electronic process, and should be set up using the restricted procedure with some other conditions (as set out in Regulation 34 of the Public Contracts Regulations 2015).

## **5. IMPLICATION IF THE SERVICE IS NOT RE-COMMISSIONED**

- 5.1 All service users have been assessed as having eligible needs as defined in the Care Act 2014 and failure to meet these needs would be a breach of statutory duty. Not commissioning a care home not an option.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 There are no additional financial implications for the short-term extension to the current contractual arrangements as the fees will remain the same and can be met within existing resources.

## **7. EQUALITIES**

- 7.1 In considering the option to extend the current contractual arrangements it is deemed that this would not adversely affect anyone protected by a relevant characteristic within the Equality Act 2010.
- 7.2 There will be no disproportionate impact on a particular group from the proposed extension of the contract as the service is currently in operation and there will be no major change in the short-term to the delivery of the service.
- 7.3 An Equalities Impact Assessment will be undertaken to support the proposed new arrangements that will be presented at the SCB for approval to commence no later than 1 April 2018.

## **8. RISK MANAGEMENT**

- 8.1 It is envisaged that providers who are currently on the Off Framework will object to the extension of the current contractual arrangements as they anticipated that, from the 10 December 2017, the contract (and fees) would change.
- 8.2 To help mitigate this risk the Council has had discussions with the Off Framework providers to explain the rationale and to give assurance that, within the extension period, work will be undertaken for new arrangements (including discussions about fee levels) to be in place from the 1 April 2018.

## **9. CONCLUSION**

- 9.1 The proposed extension period, whilst it may not be welcomed by the Off Framework providers, will give the Commissioners and all providers additional time to establish the implications of a policy change, to explore a new category of enhanced residential care and to establish a new approved list (via a DPS – including training the providers).

**10. RECOMMENDATION**

10.1 As stated on the report cover.